STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission On its Own Motion	:	
	:	**Docket No. 13-0506**
Investigation of Applicability of Sections 16-122 and 16-108.6 of the Public Utilities Act	:	

CORRECTED REPLY BRIEF ON EXCEPTIONS OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

Staff of the Illinois Commerce Commission ("Staff"), by and through its undersigned counsel, pursuant to Section 200.830 of the Illinois Commerce Commission's ("ICC" or "Commission") Rules of Practice (83 Ill. Adm. Code 200.830), respectfully submits its Reply Brief on Exceptions ("RBOE") in the above-captioned matter.

I. BACKGROUND

On December 6, 2013, the Administrative Law Judge issued a Proposed Order ("ALJPO") in this docket. On December 23, 2013, the following parties submitted Briefs on Exception ("BOEs"): The Retail Energy Supply Association ("RESA"), The Illinois Competitive Energy Association ("ICEA"), CNT Energy Association ("CNT Energy"), Commonwealth Edison Company ("ComEd"), and the People of the State of Illinois ("AG"). Staff did not file a Brief on Exceptions, as the ALJPO satisfactorily addressed Staff's recommendations. In the following sections, Staff replies to some of the positions or arguments made in the BOEs that were filed on December 23rd. Staff's failure to

address other positions or arguments that were contained in those BOEs should not be construed as agreement with those positions or arguments.

II. REPLY TO EXCEPTIONS

A. Applicability of Section 16-122

Only two parties took exception to the Proposed Order's conclusion on this issue: CNT Energy and CUB.

Both CNT Energy and CUB propose to lower the number of minimum customers in a geographic area for which a utility releases "anonymous" individual customer data. In verified comments, both CUB and CNT Energy had argued for a number lower than the 30 customer minimum adopted by the ALJPO. (*See, i.e*. CUB Reply, 7; CNT Energy Reply, 12.) The City of Chicago also argued for a smaller number of minimum customers in a geographical area, but the City did not file a Brief on Exceptions on the ALJPO's conclusion on this issue. (*See, i.e.*, City Surreply, 7-8.)

Other than referring back to comments made by itself and other parties in this proceeding, CNT Energy offered no new arguments in opposition to the ALJPO's conclusion. Moreover, the replacement language proposed by CNT Energy is too brief to describe exactly what the Commission would be adopting on this issue. (CNT BOE, 2-3.) More importantly, Staff believes the ALJPO's minimum of 30 customers is a very reasonable approach to ensure the anonymity of individual customer data and a "batch" of four customers seems to leave open the possibility that information about the customer's use of or payment for electric utility services could, with reasonable effort, be linked to the customer's identity.

CUB argues that its proposed "15/15 Rule" would ensure that "third parties cannot readily identify individual customers based on their load or usage patterns." (CUB BOE, 12.) CUB also argues that the 15/15 Rule takes into account "minimizing the administrative burden on utility companies who are charged with processing data requests." (Id. at 8.) While Staff agrees that a 15/15 Rule would provide better assurances of anonymity than the proposals made by CNT Energy and the City of Chicago, Staff notes that neither ComEd nor Ameren Illinois showed a preference for the 15/15 Rule. If, as CUB suggests, the 15/15 Rule minimizes the utilities' "administrative burden," one would expect the utilities to embrace the 15/15 Rule or at least raise some concerns about the administrative burdens imposed by the methodology adopted by the ALJPO.

In fact, the opposite is true for ComEd. In its Surreply Comments, ComEd states that the minimum of 30 customers "has been vetted for ComEd resource feasibility and is generally considered to be operationally workable." (ComEd Surreply, 3.) ComEd further stated that "while the '15/15' rule's requirement to cluster customers in groups of not less than 15 customers for any given region may be similar to the proposed rule of 30 customers, its secondary requirement to remove a customer from regional samples when such customer's total usage is at or above 15% of the total usage within the sample may become resourcefully burdensome to ComEd, which may indeed result in greater costs to employ the "15/15" data extraction methodology." (Id. at 4.)

In sum, Staff finds the ALJPO's adopted minimum of 30 customers to be a reasonable balance between the need for customer privacy and the need for granular customer usage data.

In addition to arguing for the 15/15 Rule, CUB took another exception to the ALJPO's conclusion on the first issue. However, it is unclear to Staff whether CUB's exception is truly an exception. First, the heading of CUB's Exception #1 ("Data that is averaged or summed and does not contain customer specific information can be released under the law") does not seem to match the content of the text that follows it. Second, the first paragraph of CUB's first exception gives the reader the impression that the exception is directed at the fourth issue in this proceeding and not the first issue. For example, CUB's statement that "the PUA does not draw a distinction between types of customer usage data, since both Sections 16-122 and 16-108.6 refer only to customer specific information or personal information" refers more directly to the fourth issue. (CUB BOE, 3.) Third, and perhaps most importantly, CUB's apparent concern that the ALJPO's conclusion does not make it clear that interval usage is included in the universe of information about the "customer's use of or payment for electric utility services" is not shared by Staff. Id. This is especially the case given that the entire debate on this first issue is driven by the desire for access to individual customer interval data. Staff notes, however, that it does not believe that CUB's proposed addition of "[t]his includes interval usage data if such data is available" on page 17 of the ALJPO as well as the addition of "including interval usage data" on page 28 of the ALJPO would change the substance of the ALJPO's conclusions.

B. Issue 4: RES access to its customers' interval data for non-billing purposes

Six of the nine parties in this Docket filed a BOE and five of those six parties took exception to the ALJPO's conclusions on Issue 4. CUB, ICEA and RESA argue that the

ALJPO erred by imposing overly restrictive requirements on the suppliers, and ComEd and the AG argue that the ALJPO's proposed disclosure/authorization requirements did not go far enough.

In Staff's view, however, the ALJPO strikes exactly the right balance between ensuring proper customer disclosures and avoiding additional requirements that are administratively burdensome to implement. In reviewing the BOEs from the parties on either side of the issue, Staff does not take issue with several of the arguments made by the parties. However, the proposed solutions by ComEd and the AG on the one hand and ICEA, RESA, and CUB on the other, are proposals that are at the extreme (and opposite) ends of the spectrum. The ALJPO rightfully rejected those proposals.

Starting with the arguments made by CUB, ICEA, and RESA, Staff summarizes them as follows:

1) The law does not distinguish between monthly summary usage data and interval usage data, and therefore the possession of an account number should be sufficient for a RES to request interval usage data for non-billing purposes. (CUB BOE, 4; ICEA BOE, 3-4; RESA BOE, 1.)
2) The ALJPO's requirements put undue burden on suppliers providing government aggregation service. (CUB BOE, 6; ICEA BOE, 6-8.)
3) The ALJPO's requirements frustrate efforts by suppliers to offer its existing customers new pricing schemes. (CUB BOE, 6; ICEA BOE, 5.)

On the other hand, ComEd and the AG argue that the ALJPO's proposed requirements do not go far enough. These two parties argue that:

1) The ALJPO's approach with respect to governmental opt-out aggregation does not require affirmative action by the customer. (ComEd BOE, 3.)
2) All customer authorizations for the release of interval data for non-billing purposes should be in writing. (AG BOE, 2.)
3) Suppliers should also be required to disclose additional items with respect to the collection and use of interval data. (AG BOE, 2-3.)

Given that the parties attack the very same conclusions in the ALJPO from opposite ends of the spectrum (with ComEd and the AG arguing the ALJPO does not go far enough and ICEA, RESA, and CUB arguing the ALJPO went too far), Staff will address the issues raised in the BOEs mainly on an issue-by-issue basis rather than party-by-party. However, Staff's response below is divided into two main parts: Staff will first address all of the issues that address situations outside of governmental aggregation and then address all issues concerning governmental aggregation settings.

While ICEA takes lengthy exception to the ALJPO's conclusion on Issue 4, it never acknowledges once that the granularity of a customer's interval usage data raises special customer privacy concerns. In other words, ICEA sees no public policy-based justification for the ALJPO's conclusions and instead uses mainly legal arguments for its position. ComEd's arguments, on the other hand, are driven chiefly by its concern regarding the "sheer volume and level of granularity of customers' sensitive individual interval usage data to which RESs would have access." (ComEd BOE, 5.) While Staff does not agree with ComEd's proposal regarding separate affirmative customer authorization in governmental aggregation settings, Staff certainly shares ComEd's

concerns about releasing customers' interval usage data for non-billing purposes and acknowledges that there are compelling policy reasons to reject ICEA's (and RESA's and CUB's) argument that there should be no distinction between releasing a customer's monthly summary data and a customer's (hourly) interval data.

ICEA and CUB put great emphasis on pointing out that the law does not distinguish between monthly summary data and interval data. For example, ICEA laments that the ALJPO rejected ICEA's position "without any statutory support" (ICEA BOE, 3) and CUB states that the PUA does not "draw distinctions between customer authorization for monthly usage data versus interval usage data." (CUB BOE, 4.) The flaw in both ICEA's and CUB's legal argument is that the PUA does not specify *any* particular method of satisfying the law's requirement for "verifiable authorization" (220 ILCS 5/16-122(a)). ICEA and CUB are essentially arguing that since the Commission has previously deemed a third party's possession of a customer's account number as satisfying the statutory requirement for verifiable authorization in some situations, any and all situations requiring verifiable customer authorization can be satisfied by possessing the customer's account number. Staff recommends that the Commission reject this reasoning.

Nowhere in Section 16-122 or 16-108.6 does it state that there can be only a single form of proper, verifiable customer authorization to meet the statutory requirement. Staff simply fails to see why the Commission is legally prohibited from adopting authorization standards that take into account the circumstances of the specific authorization that is being requested. To put it differently, Staff, unlike CUB, is not confused when the ALJPO "concludes that having a customer's account number

'may be considered customer consent to receive certain information about such customer's account, including the customer's participation in the PTR or NM programs…'" (CUB BOE, 5.)

Instead of repeating arguments made by ComEd in its Initial Verified Comments, Staff simply notes that it agrees with ComEd's assessment that the current forms of authorization "have never been deemed to authorize access to all of the billing and usage data that ComEd possesses for each customer" (ComEd Comments, 8.) ComEd further noted that, "in general, RESs were deemed to have authorization to have access to the information needed for the RES to provide supply and billing service to its customers." Id. No party has argued that interval usage data for customers on fixed rate services is needed for the RES to provide supply and billing service to its customers. Having said that, Staff agrees that there is a benefit in allowing a supplier to review its existing customers' interval usage even if such customer is currently not on a time-variant supply service.

Reading the BOEs of ICEA and CUB leaves an impression that the ALJPO prohibits a supplier from requesting interval data for non-billing purposes. For example, CUB states that the ALJPO's conclusion "will in effect bar those RESs with existing customers […] from offering those customers new pricing programs based on their usage" (CUB at 6). Similarly, ICEA states that "equally frustrating is the fact that because interval usage data is not available without additional authorization, an ARES could not develop a customer-specific product based on interval data that may save the customer money." (ICEA, 5.) Instead of preventing a supplier from offering time-variant services, the ALJPO merely ensures that the supplier has properly disclosed to its

customer that the supplier has the ability to access such customer's interval usage data for non-billing purposes. The ALJPO describes how such a disclosure should occur during the initial sign-up of the customer, and the ALJPO requires that a separate authorization be obtained if the proper disclosure did not occur during the initial sign-up.

ICEA's frequent focus on the different types of meters, standard versus smart meter, does not seem to serve a purpose other than to potentially confuse the issues at hand. Neither ComEd, Staff, nor the ALJPO suggest that the disclosure/authorization requirements have anything to do with the type of meter a customer uses. It is clear to everyone that the privacy concerns arise from the level and granularity of the data collected and not from the type of meter itself. ICEA's statement that "a smart meter is identical to a standard meter except where a standard meter records a customer's total monthly usage, a smart meter records total monthly usage using intervals" is akin to saying that a floppy disk is identical to an external hard drive except where a floppy disk records about 1.44 MB of data, an external hard drive records up to 4 TB of data.

ICEA states that the practice of requiring only the possession of a customer's account number in order to access the customer's usage data, "has not resulted in any formal slamming complaints or other data 'misuse' complaints filed with the Commission." (ICEA BOE, 9.) Staff finds this line of reasoning unconvincing.

First, it is impossible for the Commission to have received contacts from customers complaining about the release of their interval usage data without proper consent, because ComEd has not yet released any residential interval data to a supplier. Second, Staff does not recommend that the Commission assume that residential customers are willing to release their granular interval data (currently

collected in half-hour intervals) to a supplier for non-billing purposes without prominent disclosure that such release is allowed. Similarly, Staff fails to see why the disclosure/authorization requirement adopted in the ALJPO will create "an additional complication for any customer currently having their usage recorded by a standard meter and obtaining service from an ARES," and ICEA does not elaborate on this claim. (Id. at 5.) Staff does not see these requirements as a complication for customers but rather as a benefit to customers. However, it is likely that ICEA views these requirements as a "complication" for a RES. Staff recommends that the Commission view this potential supplier "complication" as a small price to pay for the added disclosure benefit for residential customers.

ICEA further states that "an ARES has the legal right to access its customer's data by virtue of the fact that the customer has a signed contract with an ARES." (ICEA BOE, 9.) ICEA claims that "the supply contract contains language which clearly states that, **"You authorize [ARES] to obtain all data necessary…including but not limited to: accessing and using account information."** Id. First, it is unlikely that ICEA has obtained and reviewed every supplier contract in use in Illinois and thus, the Commission should not rely on such broad claims put forward by ICEA. Second, even if every single contract between a supplier and a residential customer in Illinois contained the language put forth by ICEA, it does not change the fact that interval usage data is not *necessary data* for a supplier to serve a customer on non-time-variant rate.

Similarly, CUB argues that the ALJPO's conclusion that a RES "need additional authorization once a customer's consent has been given by the sharing of an account number or in fact by serving as that customer's electric supplier should be rejected."

(CUB BOE, 5.) Staff, however, fails to believe that the Commission should assume that because a supplier has obtained the customer's account number, or even enrolled the customer, the supplier has properly informed the customer that it is able to access the customer's interval data although it does not need such interval data for billing purposes. Staff agrees with CUB that "Section 16-122, for example, provides already that a customer's authorized agent can receive that customer's billing and usage data," but Staff shares the ALJPO's conclusion that the authorized agent follow the ALJPO's adopted disclosure/authorization requirements when the agent requests a customer's interval usage data for non-billing purposes. Id. Staff is unable to discern the point(s) CUB is attempting to convey with the other arguments on page 5 of its BOE.

The AG, while generally supportive of the ALJPO's conclusions regarding Issue 4, argues that the required disclosure to the customer contain: 1) "the RES's definition of interval data", 2) "what information they seek to collect", 3) "how the data will be stored", 4) "what security processes are in place to protect the data from unauthorized acquisition", 5) "what the data will be used for", and 6) "what recourse the consumer would have in case of unauthorized release." (AG BOE, 3.) While Staff does not have a strong opinion about the AG's proposed requirements, Staff offers the following thoughts. Items 1 and 2 above appear to be asking for the same information. In addition, it is likely that it is the utility (or potentially the Commission) and not the supplier that decides what type of interval data will be made available (hourly, half-hour, 15-minute intervals, and so on). While items 3 and 4 may sound like useful information in theory, it is likely that the descriptions will end up confusing rather than benefitting the average residential customer. As to item 6, it seems unwise to let the supplier explain

the recourse available to a consumer, since the suppliers do not enforce such laws. The laws and regulations are what they are, and it is unlikely that a brief description by a supplier will do them justice.

The AG also argues that only a "wet signature" should satisfy the authorization requirement for the release of interval data for non-billing purposes. (AG BOE, 3.) Staff disagrees. Staff recommends that the same types of customer authorizations that are used for customer switching also be used to satisfy the authorization of the release of interval data. In fact, this is at the heart of Staff's proposal and the ALJPO's adoption of the same. The ALJPO concludes that the supplier "be required to disclose authorization in the same prominent manner in which other crucial terms and conditions are required to be disclosed pursuant to Section 412.100 of the Commission's Rules" if authorization is obtained through the initial customer signup (ALJPO, 26.) It is unclear to Staff why the permissible authorizations should be more restrictive for the release of interval data than for the purpose of a customer switching suppliers.

In its BOE, ComEd now recommends that the Commission order "in the event a customer has given express instruction to the utility not to share its data for marketing purposes for any reason, the utility must continue to honor that instruction until the customer expressly directs the utility otherwise." (ComEd BOE, 6-7.) Besides the fact that ComEd raises this issue for the first time in its BOE, Staff has several concerns with ComEd's new recommendation. First, it is unclear whether ComEd is referring to some existing ComEd standardized customer request to not share data for marketing purposes or whether ComEd is referring to individual, ad hoc requests by customers. Furthermore, it is Staff's understanding that ComEd does not maintain a "Do Not

Market" list, unlike Ameren Illinois. Second, it is unclear what would constitute a customer's "express direction to the utility" in order to override a prior generic marketing ban. It appears ComEd would not accept a customer's authorization to a RES in order to lift such a possible prior and generic marketing/sharing prohibition. If that is the case, it is unclear how the disclosure and authorization requirements in the ALJPO would coexist with the "clarification" sought by ComEd.

Customer authorization in an opt-out governmental aggregation setting

ICEA states that "the IPA Act specifically authorizes the Government Aggregator to request from the utility account numbers, names and addresses of residential and small commercial customers in the aggregated area" and that "this statutory framework does not change because of the introduction of interval data recorded using a smart meter." (ICEA BOE, 6) Staff does not disagree with these statements, but Staff fails to see how they support ICEA's position. The IPA Act does not require the utilities to provide individual customer usage data to the Government Aggregator, and the utilities currently do not do so when a Government Aggregator requests names, addresses and account numbers from the utility. It is unclear to Staff what the provision of customers' names, addresses, account numbers pursuant to Section 1-92 of the IPA Act has to do with the discussion about proper disclosure/authorization when a RES requests access to interval usage data for non-billing purposes.

Similar to its argument made above in the non-aggregation setting, ICEA claims that existing governmental aggregation contracts with residential customers contain sufficient disclosure about the supplier's ability to request interval data from the utility for non-billing purposes. Specifically, ICEA states that "while the wording in an ARES

supply contract will understandably vary, it is ICEA's belief that such contracts typically contain a paragraph that something along the lines of the following: […]" (ICEA BOE, 6.) Even if the Commission were to share ICEA's "belief" that those contracts "typically" contain some language "along the lines" of what ICEA portrays in its BOE, Staff notes that the language put forth by ICEA still fails to cover the specific situation of requesting interval data for non-billing purposes. Just like the language put forward by ICEA in the context of a non-aggregation setting above, the provision refers to "necessary" data. As Issue 4 in this Docket concerns the release of interval data for non-billing purposes, Staff fails to see how this could be considered necessary data.

ICEA also claims that the recently released First Notice Rule in the Government Aggregation Rulemaking (Docket No. 12-0456) somehow addressed the issue of customer authorizations for the release of interval usage data for non-billing purposes. ICEA argues that a customer who does not opt-out of the aggregation program agrees "to having their electric supply service switched to the Aggregation Supplier under the terms and conditions applicable to the opt-out aggregation program" and that "by accepting an Aggregation Supplier's terms and conditions such as those stated above, the customer has provided consent for an ARES to access the customer's usage, including interval usage used for non-billing purposes," (Id. at 7,) However, Staff does not find it likely that the existing terms and conditions explicitly disclose the fact that the supplier is able to access the customer's interval usage data for non-billing purposes. In fact, ICEA itself acknowledges that "the opt-out materials did not include a specific reference to interval data." (ICEA BOE, 7.) If ICEA's referenced "example" or "typical" language referenced in its BOE is indeed what is being used in existing contracts with

residential customers, Staff fails to see how such language even begins to properly alert the customer that the supplier will be able to access the customer's interval data for non-billing purposes.

The AG appears to propose the same "wet signature only" requirement discussed above for customers being acquired through opt-out governmental aggregations (AG BOE, 3.) For the same reasons explained above, Staff disagrees with this proposal. In addition, the process for opt-out aggregations does not require customers to take affirmative action if they want to be part of the aggregation program and Staff believes it is counter-intuitive to require customers to take affirmative action when authorizing a supplier to access interval data for non-billing purposes in an opt-out aggregation setting, as long as the explicit and prominent disclosure has been made a part of the opt-out customer disclosure.

ICEA further states that "customer confusion, as well as complaints will result if a separate authorization process to obtain interval data was implemented for existing municipal aggregation customers simply because their meter was switched to a smart meter" (ICEA BOE, 7). First, ICEA does not share its reason for the belief that confusion and complaints will ensue, and Staff has no independent basis upon which to agree with ICEA's speculation. . Second, a separate authorization (separate from the required opt-out customer disclosure) is only required if: (a) the aggregation supplier did not make the proper disclosure during the opt-out process; and (b) the aggregation customers are actually receiving smart meters before the next opt-out disclosure is being sent. Third, if the ALJPO's conclusion is adopted by the Commission, this "separate process" will

apply to all existing residential RES customers and not just opt-out aggregation customers.

ComEd, on the other hand, argues that the ALJPO's requirement of proper disclosure during the opt-out process does not go far enough. ComEd claims that "the two concepts – affirmative authorization for some customers and presumed authorization for others – simply do not comport." (ComEd BOE, 4.) However, ComEd is wrong when it claims that whether affirmative authorization is required depends on the method of acquiring customers. The ALJPO makes it clear that proper initial disclosure is the deciding factor as to whether a separate, affirmative authorization is required. In the context of signing up customers outside of governmental aggregation, the prominent disclosure is required at the initial signup of the customer. The customer is giving only one affirmative authorization in this scenario: his or her authorization to switch suppliers. Neither Staff's proposal nor the ALJPO's conclusion require two separate affirmative customer authorizations in a non-aggregation setting as long as the disclosure about the supplier's ability to request interval data for non-billing purposes has been done in the prominent manner outlined in the ALJPO. In other words, the customer's authorization for the supplier to access interval data for non-billing purposes is tied to the customer's authorization to switch electric suppliers. Furthermore, the same logic applies to opt-out aggregation settings: the customer's authorization to allow the supplier access to interval data for non-billing purposes is tied to the customer's authorization to switch suppliers by not opting out. Just like the situation in a non-aggregation setting, the ALJPO properly only allows this authorization in an aggregation

setting if the proper disclosure has been made as part of the required opt-out customer disclosure.

ComEd's argument that "a customer who does not read or does not receive this particular piece of postal mail would have no way of knowing that passive consent for access to sensitive data was deemed to have been granted through his or her inaction" (ComEd BOE, 5) does not seem very persuasive to Staff. If the Commission were to assume that customers do not read or receive the required disclosures, whether part of an aggregation or outside of an aggregation, none of the specific disclosure requirements being proposed here would matter.

ComEd repeatedly calls the disclosure requirements for opt-out aggregation situations as "granting easy access to customer interval data" (Id. at 5) and wonders "what purpose is served by making interval data so easily accessible." Id. However, reviewing the BOEs of CUB, RESA, and ICEA, it appears that those parties hardly agree with ComEd's characterization that the ALJPO's conclusions make it "easy" for suppliers to receive interval data, even in opt-out aggregations. It appears to Staff that when some parties argue access is "too easy" and other parties argue access is "too difficult," those are indications that the ALJPO achieved exactly the right balance.

ComEd further states that the ALJPO's conclusions "would provide an incumbent governmental aggregation supplier with an unfair competitive advantage in relation to other RESs" because such suppliers "could use customers' interval data (to which no other suppliers have access) to market various alternative electricity supply products […]" (ComEd BOE, 6.) First, it almost sounds as if ComEd would rather outright prohibit aggregation suppliers from accessing interval data for non-billing purposes rather than

simply making it less “easy” for them to obtain authorization. This, of course, would violate Section 16-122 of the PUA. Second, while it is true that a customer’s current supplier would have usage information not available to other suppliers if it receives authorization to access interval data for non-billing purposes, the same situation applies to suppliers which have acquired their customers outside of an aggregation. In other words, if one where to characterize having access to the customer’s interval data for non-billing purposes as “an unfair competitive advantage”, this same unfair competitive advantage applies to any supplier, regardless of how the supplier acquired the customer.

ComEd further states that if the ALJPO’s conclusions get adopted it “could well lead to an increase in customer calls into the Commission’s and utility customer care centers, an increase in customer complaints (formal and informal), and in increase in customer rescission requests” (ComEd BOE, 6.) While ComEd fails to elaborate on this further, Staff cannot come to such conclusions. Staff believes such an outcome is indeed not unlikely if the Commission did not adopt the disclosure and authorization requirements Staff proposed and instead followed the recommendations of ICEA, RESA, and CUB. Staff is hopeful that its proposed disclosure and authorization requirements, which were accepted in the ALJPO, will raise awareness about possible interval data requests by the suppliers, and that it will prevent large volume of customer calls and complaints. Staff also fails to share ComEd’s prediction that the ALJPO’s conclusions “could potentially lead to customers refusing the installation of an AMI meter or requesting that an existing AMI meter be removed.”Id.

While Staff certainly does not agree with many of the arguments put forth by the parties in their BOEs, one line of ICEA's reasoning is truly puzzling to Staff. ICEA claims that the ALJPO's disclosure/authorization requirements will cost the "municipal aggregation community" "over $4 million" (ICEA BOE, 8.) ICEA arrives at this figure by arguing that since the previous opt-out disclosures did not "include a specific reference to interval data", all aggregation suppliers will be required "to send a separate mailing to over 2.25 million municipal aggregation residential customers" (Id. at 7.) Unfortunately, ICEA's argument is misleading at best and factually incorrect at worst. First, there is absolutely no reason to send a separate request for a customer's authorization to release interval data to the supplier for non-billing purposes if the customer is not expected to receive a smart meter anytime soon. There is no interval data to access if the customer has no smart meter to record interval data. Not only is it public information that virtually no Ameren Illinois residential customer has a smart meter at this time and only a very small number of ComEd customers have one currently, ICEA, through participation in recent Commission proceedings and workshops, should be fully aware of this situation. It is Staff's understanding that, as of right now, ComEd has installed approximately 210,000 AMI meters and hopes to install another 160,000 by the end of this year and an additional 680,000 by the end of 2015. Ameren Illinois is expected to install a total of 188,000 AMI meters[1] through the end of calendar year 2015.[2] Thus, even assuming that every single smart meter that has been installed, or will be installed

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[1] See Docket No. 12-0244.

[2] The reason Staff chooses the end of 2015 as a cut-off date in this discussion is that the vast majority of existing government aggregation contracts expire before 2016. The existing contracts that extend into 2016 tend to cover relatively small communities.

this year and next, belongs to a governmental aggregation customer, the number of "required" mailings will be well below the 2.25 million ICEA claims in its BOE. As a result, taking ICEA's estimated $1.80 per mailing at face value, the total cost to all aggregation suppliers will be a small fraction of the "over $4 million" claimed by ICEA.

Second, even if every single aggregation customer had an AMI meter today, the number of "required" mailings would still be well below the 2.25 million argued by ICEA. A large number of aggregation communities have existing contracts that expire well before the end of 2015 and many of them expire later this year. As a result, the number of mailings would be far less than the theoretical total of all installed meters.[3] Third, some communities will be required to mail its existing customers even before the end of the contract with the supplier because the contract calls for possible rate changes before the end of the contract. For example, the City of Chicago's contract with Integrys expires in 2015, but the current aggregation rate is not guaranteed beyond May of 2014.[4] Such a rate change would require a mailing to all existing aggregation customers and such mailing could be used to add the interval data disclosure/authorization instead of requiring a separate mailing altogether.

In sum, ICEA is well aware of all of the facts in the preceding paragraphs and this makes ICEA's argument misleading. Staff actually agrees with ICEA when it states that "it does not make sense to seek additional authorization from existing municipal aggregation customers, especially with numerous municipal aggregation contracts

[3] Another factor to consider is that there are more meters than customers in both ComEd and Ameren Illinois' area. Thus, an installed number of, say, 500,000, AMI meters does not equal 500,000 customers. Granted, for most residential and small commercial customers (the ones participating in governmental aggregations), the meter-to-customer ratio will be close to one-to-one.

[4] See http://www.integrysenergy.com/aggregation/il-chicago/.

terminating in 2014." (ICEA BOE, 8.) However, as shown above, the reason it does not make sense is not "due to the cost to the municipal aggregation community" but rather due to very few customers actually receiving a smart meter before the aggregation contract expires or other mailings are scheduled to occur anyway.

Related to its argument about the excessive cost associated with mailing millions of customers, ICEA argues that "this unnecessary cost is compounded by the fact that municipal aggregation customers will be required to send back their authorization to the Aggregation Suppliers, likely in the form of a postcard." Id. However, the ALJPO adopts Staff's recommendation that a separate verifiable authorization be obtained "consistent with Section 2EE of the Consumer Fraud Act." (ALJPO, 26.) While mailing back a postcard is certainly one form of authorization allowed under the Consumer Fraud Act, it is not the only allowed form of obtaining customer authorization.

On the topic of governmental aggregation, CUB states that "the Proposed Order appears to be most concerned about customers acquired by a RES within the context of municipal aggregation." (CUB BOE, 5) and that the ALJPO "imposes extra obligations on RES who manage to win municipal aggregation contracts as opposed to RESs who acquire customers through 'traditional' means such as 'face-to-face' marketing" (Id. at 6.) CUB also asks "why the granularity of the data matters more in the context of an aggregation overseen by a directly elected government body than door-to-door sales" Id. Frankly, Staff is unsure why CUB believes the ALJPO creates extra burdens for aggregation suppliers. In fact, ComEd's entire BOE is dedicated to arguing that the disclosure/authorization requirements for governmental aggregation situations are too weak compared to the requirements outside of aggregations. As described above, Staff

does not share ComEd's belief that the ALJPO's adopted requirements are too weak. At the same time, Staff fails to see how the ALJPO creates extra burdens on aggregation suppliers, and CUB does not elaborate as to why it believes the ALJPO is unfairly disadvantaging aggregation suppliers.

As part of its proposed replacement language, CUB recommends adding the following two sentences to the ALJPO's conclusion on page 27: "As discussed above, however, the Commission believes that its Data Protocol will provide sufficient protection to prevent the identification of any customer or the release of any personal or customer specific information. Since the law draws no distinctions between types of usage data, the Commission declines to require additional authorization at this time." It appears CUB has either placed the first proposed sentence in the wrong place by mistake (the first sentence refers to the Data Protocol and the identification of customers, both of which are topics in Issue 1 in this proceeding) or CUB is genuinely confusing the subject matter at hand in Issues 1 and 4. In either case, Staff recommends that the Commission reject CUB's proposed replacement language.

There is one item in ComEd's BOE that Staff ultimately agrees with and would lead Staff to recommend a clarification to the ALJPO. ComEd argues that "customers should not be required to agree to the disclosure of their interval usage information as a condition to receiving the benefits of governmental aggregation." (ComEd BOE, 6.) Staff agrees with this. As a result, Staff recommends that the ALJPO be modified to clarify that a customer is able to join an aggregation program even if such customer is not willing to release his or her interval usage data to the aggregation supplier for non-billing purposes. A customer who is asked to provide the aggregation supplier with separate

interval data authorization in situations where the opt-out notice did not contain the required interval data disclosure, has the option to not provide such authorization to the aggregation supplier. This same right should apply to customers who receive an opt-out notice that contains the proper interval data disclosures required by the ALJPO. As a result, the aggregation supplier should allow a customer to opt-out of the authorization to release interval usage data even if the customer does not want to opt-out of the aggregation program.

In order to reflect this in the ALJPO, Staff recommends the Commission Analysis and Conclusion on page 27 be modified as follows:

> Additionally, the Commission agrees that the customer disclosure required for opt-out aggregations should be used to obtain customer authorization to receive interval data for non-billing purposes. As stated by Staff, if an aggregation supplier desires to receive customer specific interval data for non-billing purposes, the opt-out disclosure to the customer must describe this fact and alert the customer that not opting out ~~of the aggregation program~~ will authorize the aggregation supplier to receive interval data for non-billing purposes as long as the customer remains in the aggregation program. The opt-out disclosure should make it clear that the customer has the ability to decline authorization for the release of interval data for non-billing purposes even if the customer does not act to opt-out of the aggregation program. If the opt-out disclosure does not contain such an authorization, the aggregation supplier has to obtain separate authorization from its existing aggregation customers if it wishes to receive interval data for non-billing purposes.

ICEA expresses concern with the ALJPO's conclusion that "the level of authorization necessary to access customers' interval data" be determined in future workshops because ICEA fears that "utilities may not release interval data to ARES until the workshops are completed." (ICEA BOE, 5.) Staff's response is two-fold. First, Staff believes the ALJPO has already concluded the level of customer authorization needed in both aggregation settings and non-aggregation settings. This is based on the

language found in the body of the ALJPO as well as in the Finding and Ordering paragraphs. On page 27 of the ALJPO, the ALJPO provides the following:

> Staff asserts that RESs should obtain customer authorization for access to this information either through initial signup or separate verifiable authorization consistent with Section 2EE of the Consumer Fraud Act. If authorization is obtained through initial signup, Staff recommends that RESs be required to disclose authorization in the same prominent manner in which other crucial terms and conditions are required to be disclosed pursuant to Section 412.110 of the Commission's Rules. Staff then proposes that RESs would certify to the utilities that they had obtained such authorization through the development of a new step in the DASR process. The Commission supports Staff's proposal regarding the level of authorization necessary to access customers' interval data […]

In addition, the ALJPO's Finding and Ordering Paragraphs contains the following:

> (6) Sections 16-122 and 16-108.6 require RESs to obtain customer authorization for access to AMI interval usage data through initial signup or separate verifiable authorization consistent with Section 2EE of the Consumer Fraud Act. With respect to municipal aggregations, customer disclosure required for opt-out aggregations should be used to obtain customer authorization. The responsibility to obtain these customer authorizations rests solely with the RES, and the RES should be required to separately and affirmatively acknowledge to the utility that it has proper customer authorization.

Taken together, Staff believes the ALJPO adopted Staff's proposal regarding the required customer disclosures and customer authorizations in both aggregation contexts and outside of aggregations. Staff understands the ALJPO's directive that "the parties come together in an effort to reach consensus regarding the method for achieving this result in future workshops" to mean that the parties discuss the proper process for a RES to show to the utility that it has obtained the required customer authorization. Staff's understanding is that the workshop process described in the ALJPO refers to Staff's proposal "that RESs would certify to the utilities that they had obtained such authorization through the development of a new step in the DASR process." (ALJPO, 27.)

Second, given that the ALJPO, in Issue 1, authorizes the dissemination of anonymous individual interval usage data to suppliers and that the number of installed meters remains relatively low for the immediate future, Staff is not overly concerned with the ALJPO's recommendation to hold workshops on the utility process for confirming the proper customer disclosures/authorizations have occurred. Having said that, Staff would not object to the Commission setting a deadline for reporting back to it on whether such consensus has been achieved.

III. CONCLUSION

Staff recommends that the Commission approve Staff's recommendations made herein.

Respectfully submitted,

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